IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 8094 of 1999
with
Civil Application No.1486 of 2003.

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT NARANDAS MEHTA
Versus
HANSABEN KRISHNALAL

Appearance:
1. First Appeal No. 8094 of 1999
MR RA SEJPAL for Appellant No.
MR DILIP B RANA for Respondent No. 1
MR BALVANTRAY MEHTA for Respondent No. 1
RULE SERVED for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 14/10/2004

ORAL JUDGEMENT

FIRST APPEAL No 8094 of 1999

1. This First Appeal arises out of a judgment and decree rendered by learned Extra Assistant Judge, Jamnagar, on 15th December,1999, in Civil Misc. Appeal No.70 of 1998. The said appeal was preferred before the District Court, under Section 72 of the Bombay Public Trusts Act, against the order of the Joint Charity Commission in Appeal No.5 of 1997, dated 23rd July, 1998. The said appeal before the Joint Charity Commissioner arose out of an order made by Assistant Charity Commissioner in Change Report No.202 of 1994 on 25th March,1997. The said Change Report No.202 of 1994 by Hansaben (present respondent no.1) before the Assistant Charity Commissioner, Rajkot, for entering her name as a trustee came to be allowed by order dated 25th March,1997.

1.1 Aggrieved by the said order, present appellant had preferred Appeal No.5 of 1997 before the Joint Charity Commissioner and the Joint Charity Commissioner dismissed the appeal on 23rd July,1998, setting aside the order of the Assistant Charity Commissioner, bringing Hansaben as a trustee. Against dismissal of the said appeal, present respondent no.1 preferred Civil Misc. Appeal No.70 of 1998, under Section 72 of the Bombay Public Trusts Act, before the District Court, at Rajkot, and the learned Extra Assistant Judge, allowed the said appeal and set aside the order passed in Appeal No.5 of 1997 and, therefore, this Appeal.

2. Learned Advocate, Mr.Sejpal, appearing for the appellant submitted that the trust has its antecedent in temples established by Devchandraji Maharaj, who had established two temples of Nijanandi Sampraday, one being "Chakada Mandir" and the other being " Raj alias Rajaji Mandir". Mr.Sejpal submitted that these two temples are, now, two separately registered public charitable trusts. Chakada Mandir is registered vide Trust No.A/1135 of Jamnagar whereas Raj Mandir is registered vide Trust No.A/1163 of Jamnagar.

2.1 Mr.Sejpal submitted that Devchandraji was succeeded by Vihariji, who had no children and, therefore, he gave management of the two temples to his two nephews (sister's sons), Premanandji and Balchandraji and, from that time onwards, the two temples are being managed by the desecendants in their respective lines. Mr. Sejpal submitted that the management of Raj Mandir was given to Balchandraji, who was succeeded by Naranji,

Karasanji, Sunderlal, Chhaganlal, Jaikrishna and Amritlal. Amritlal Jaikrishna made an application before the Deputy Charity Commissioner, Rajkot, under Section 18 of the Bombay Public Trusts Act, for registering the trust as "Shri Raj alias Rajaji Mandir and Dhani Shri Devchandraji Maharaj Charan Paduka Mandir Trust". The said application was made on 7.8.1966. However, Amritlal Jaikrishna expired on 21st August,1996, within a few days of filing such application. An order passed on 22nd July, 1968 by the Deputy Charity Commissioner, after holding an inquiry that it was a public religious trust and the trust was given No.A/1163 of Jamnagar. Deceased Amritlal's sister, Manekbai, was then managing Raj Mandir Trust till she expired on 13th August,1969 and, thereafter, her daughter, Chandramaniben, continued to manage the trust, till she expired on 2nd May,1995.

2.2 In the meantime, in May 1987, Chandramaniben had applied for changing the mode of appointment of trustees, by preferring Revision Application No.8 of 1987 and it was decided in 1992 that there was no trustee on record between 1969 and 1992. However, the Joint Charity Commissioner, in his order dated 20th October,1992, held that the mode of succession be "lawful successor in the Shri Raj alias Rajaji Mandir Branch of Shri Devchandraji Maharaj may become trustee and Poojari" and, thereafter, name of Chandramaniben was entered into by virtue of an order passed on 30th January,1993, by the Assistant Charity Commissioner, Rajkot, in Change Report No.611 of 1992, under Section 22 of the Bombay Public Trusts Act. Chandramaniben continued to work as trustee, thereafter, till her death on 2nd May,1995.

2.3 Present appellant, who happens to be son of Chandramaniben, filed Appeal No,.5 of 1997 against the order passed in Change Report No.202 of 1994, for entering respondent no.1's name as a trustee on the ground that she happens to be son of Chandramaniben, which came to be allowed by the Assistant Charity Commissioner, which was confirmed by the Joint Charity Commissioner in Appeal No.8 of 1997. Therefore, the present respondent preferred Civil Misc. Appeal before the District Court, which allowed the appeal.

3. Learned Advocate Mr.Sejpal submitted that the respondent no.1 is not falling in the line of descendant in Raj @ Rajaji Temple and by virtue of the mode of succession decided on 20.10.1992 by Joint Charity Commissioner, Rajkot in Revision Application No.8 of 1987, only person falling in the line of descendant in Raj @ Rajaji Temple can be appointed by the learned

Assistant Charity Commissioner appointing respondent no.1 as a Trustee by order dated 25th March,1997 was not proper and, therefore, Appeal No.5 of 1997 preferred by the present appellant under Section 70 of the Bombay Public Trusts Act against the order in the change report came to be allowed. However, the learned Assistant Judge, while allowing the Civil Misc. Application No.70 of 1998, overlooked this aspect and set aside the order of learned Joint Charity Commissioner which is a mistake committed by him. Respondent no.1 falls in the line of descendant in the Chakada Mandir Trust undisputedly and claims through Krishnalal Chhotalal, whereas the Trust in question is Raj Mandir Trust. The mode of succession / appointment of Trustee has been held to be any person falling in lines of descendant of the Raj Mandir of Shri Dev Chandraji Maharaj. Mr.Sejpal, therefore, submitted that the appeal may be allowed.

4. Learned Advocate Mr.Mehta, on the other hand, vehemently opposed this appeal. He submitted that the order passed in 1992 was without any inquiry. Mr.Mehta submitted that undisputedly, it has been held by the authority that there were no trustee from 1968 to 1992. He submitted that the temple and the Trust were only being managed by Manekbai or the Maniben but, they were not the trustee and they could not have been appointed as Trustee for the reasons given by the Assistant Charity Commissioner and Joint Charity Commissioner. They would not fall in the lines of descendant of Shri Dev Chandraji Maharaj. The appointment claims through his mother Chandramani, who was the daughter of Manekbai, who was the sister of Amratlal, if Manekbai was not Trustee and if Manekbai claimed interest against the Trust, she could not have been the Trustee and Chandramaniben also could not have been considered as a Trustee. Mr.Mehta submitted that Chandramani's husband has admitted that he does not follow Vijanand Sampraday and, therefore, the appellant cannot be said to be fall in lines of descendant of Shri Dev Chandraji Maharaj. Mr.Mehta submitted that inclusion of a lady member with a required pre-qualification of being a lady member of Shri Dev Chandraji Maharaj and neither Chandramani nor the appellant can be said to be belonging to pedigree of Shri Dev Chandraji Maharaj. Mr.Mehta submitted that no interference is called for in the order impugned and the appeal may be dismissed.

5. Heard learned APP Mr.H.M.Prachchak for respondent nos.2 and 3.

6. Having regard to rival side contentions, fact

remains that neither 1992 order deciding mode of succession nor the change report by the appellant has ever been challenged. It was canvassed that by virtue of provision in Section 22 of the Bombay Public Trusts Act, said order can be challenged in collateral proceedings and, therefore, the respondents has, instead of challenging the same in appeal, had filed change report for her being made an additional Trustee. However, fact remains that 1992 order and the order in change report by the appellant has remained unchanged before higher forum. It may be noted that the mode of succession / appointment has been held to be a person in the pedigree of Raj Mandir of Shri Dev Chandraji Maharaj and that order having not been challenged, has attained finality. Undisputedly the respondent no.1 does not belong to pedigree of Raj Mandir Branch of Shri Dev Chandraji Maharaj but, belongs to Chakada Mandir pedigree of Shri Dev Chandraji Maharaj. Both these Trusts viz. Chakada Mandir and Raj Mandir are separately numbered though formally they were established by Shri Dev Chandra Maharaj. After demise of Vihari Maharaj son of Dev Chandra Maharaj two separate Branchs operated through sister's son of Vihaji Maharaj viz. Premanandji and Balnandji. Keeping all these aspects in mind, in the opinion of this Court, learned Assistant Judge erred in setting aside the order of the Joint Charity Commissioner and restoring the order of Assistant Charity Commissioner of Change Report No.202 of 1994. The Joint Charity Commissioner had set aside the order in Change Report No.202 of 1994 and had remanded the matter to the Assistant Charity Commissioner for deciding the question afresh under Section 22 of the Bombay Public Trusts Act which, in the opinion of this Court, was the correct measure in light of the disputes raised by both the sides. Under the circumstances, this appeal deserves to be allowed. The judgment and order of Extra Assistant Judge dated 15.12.1999 impugned is hereby set aside and the order of Joint Charity Commissioner is restored.

CIVIL APPLICATION NO.1486 OF 2003

In view of the order passed in First Appeal No.8094 of 1999, this Civil Application does not survive. Civil Application stands disposed of accordingly.

(A.L.Dave,J.)

(vipul)